

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

PATRICIA LYNN HOGUE  
AND BUDDY HUCKABY,

Plaintiffs,

v.

NO. 1:97CV63-S-D  
1:97CV148-S-D

RANDY ROBERTS, et al.,

Defendants.

OPINION

By prior opinion and ordered issued on June 11, 1998, this court granted the motion of Pontotoc County, Mississippi, for summary judgment against plaintiffs Patricia Lynn Hogue and Buddy Huckaby, dismissing it with prejudice from this lawsuit. The court also granted the motions of United States Fidelity & Guaranty Insurance Company (USF&G) for summary judgment on its cross-claims against Randy Roberts and J. C. Aaron. Remaining for consideration are plaintiffs' motion for partial summary judgment against USF&G and Randy Roberts and USF&G's cross-motion for summary judgment.<sup>1</sup> At the heart of each of these motions is the issue of offensive collateral estoppel. Specifically, plaintiffs seek to use Roberts' conviction for deprivation of civil rights under color of law to establish liability against both Roberts and USF&G, Roberts' surety.

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<sup>1</sup>Originally, USF&G sought judgment on the pleadings but later asked the court to consider that document a cross-motion for summary judgment.

Under federal law,<sup>2</sup> collateral estoppel bars litigation of an issue previously decided in another court proceeding when four conditions are met:

(1) the issue under consideration is identical to that litigated in the prior action; (2) the issue was fully and vigorously litigated in the prior action; (3) the issue was necessary to support the judgment in the prior case; and (4) there is no special circumstance that would make it unfair to apply the doctrine.

*United States v. Shanbaum*, 10 F.3d 305, 311 (5th Cir. 1994). As to Roberts, who did not respond to plaintiffs' motion for summary judgment, the court has no hesitation in finding that these four conditions exist. Plaintiffs are therefore entitled to partial summary judgment on the issue of Roberts' liability for depriving plaintiffs' of their constitutional rights under color of law. They are also entitled to partial summary judgment on the issue of Roberts' liability under 18 U.S.C. § 2511.

As to USF&G, however, the issue is somewhat more complicated since it was not a party to the subject criminal proceedings. Nevertheless, the court believes that the first three collateral estoppel factors are met; to hold otherwise would, in this court's view, allow Roberts himself to escape the effects of his plea, a legal result no one has suggested. Rather, the court must determine whether there are any special circumstances, such as a lack of privity between Roberts and his surety, which would make it unfair to allow plaintiffs to use Roberts' conviction against USF&G.

Privity is a broad concept which requires the court to examine the surrounding circumstances to determine whether claim preclusion is justified. *Russell v. SunAmerica Securities, Inc.*, 962 F.2d 1169, 1173 (5th Cir. 1992). It is nothing more than a "legal conclusion that the relationship between the one who is a party on the record and the non-party is sufficiently close to afford application of the principle of preclusion." *Southwest Airlines Co. V. Texas International Airlines, Inc.*, 546 F.2d

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<sup>2</sup>Federal law determines the preclusive effect of a prior federal court judgment. *Russell v. SunAmerica Securities, Inc.*, 962 F.2d 1169, 1172 (5th Cir. 1992).

84, 95 (5th Cir.), *cert. denied*, 434 U.S. 832 (1977).

Although the surety-principle relationship does not by itself establish privity, *Pye v. Department of Transportation of State of Georgia*, 513 F.2d 290, 292 (5th Cir. 1975), the court is of the opinion that Roberts and USF&G are sufficiently in privity in this instance to allow plaintiffs the offensive use of collateral estoppel. The bond issued by USF&G is quite broad and does nothing more than track the language of Miss. Code Ann. § 25-1-15, which governs the contents of official bonds. Subsection (3) allows the bond to be phrased in other language and does not preclude a surety from placing conditions on the bond “except so far as they may be conditioned for the performance of acts in violation of the laws or policy of the state.” In the official bond issued by USF&G to Roberts (and indeed to Aaron), the company did not place any restrictions on the breadth of the bond, such as refusing to cover any losses or damages which might arise from a criminal conviction while in office, which would prevent the notion of privity from operating against USF&G. The court therefore finds that USF&G is collaterally estopped from relitigating any of the issues surrounding or forming the basis of Roberts’ conviction.

Even if the court is in error on this point, it believes USF&G is nevertheless afforded no relief from the color of law issue (clearly an issue of law for determination of the court, not the jury) it wishes to relitigate. Without the auspices of his office as Sheriff of Pontotoc County, Roberts could not have carried out his illegal activities as he did and indeed would have had no motivation to do so. Certainly, Roberts could have wiretapped Hogue’s *personal* telephone regardless of his official position. He did not, however, place the wiretap on Hogue’s home telephone but on her office telephone on a line reserved specifically for use by the sheriff and his secretary. There is simply no evidence to suggest that the Pontotoc County Sheriff’s Department is so unsecured that

a member of the general public with no relation to the sheriff's department whatsoever could simply walk into that office and act as Roberts did. Although Roberts was not acting as the final policymaker for the county when he carried out the illegal acts at issue, he was acting under color of his official position as sheriff. Plaintiff is therefore also entitled to partial summary judgment against USF&G on the issue of liability.

An appropriate order shall issue.

This \_\_\_\_\_ day of June, 1998.

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CHIEF JUDGE